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February 16, 2021

VIA ECF

Honorable George B. Daniels
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

FEB 18 2021

DENIED
George B. Daniels
HON. GEORGE B. DANIELS

Re: Anwyn Goldberg, et al., v. City of New York, et al.,
19-CV-04241 (GBD)(KHP)

Your Honor:

I am the attorney in the Office of James E. Johnson, Corporation Counsel of the City of New York, representing defendants City of New York and Police Officer Ryan Mclasky ("defendants") in the above-referenced matter. Defendants write to respectfully request that: 1) Defendants' December 1, 2020 motion for summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure (hereinafter "FRCP"), be deemed unopposed and fully briefed; and 2) that the Court Order that plaintiffs' request to file a Cross Motion for Summary Judgment in this matter has now been waived.

By way of background, plaintiffs Anwyn Goldberg and Solomon Watkins bring this action under 42 U.S.C. § 1983 alleging, *inter alia*, that on February 12, 2018, they were falsely arrested by defendant Mclasky who, according to plaintiffs, subjected plaintiff Watkins to excessive force. *See* Complaint at Civil Docket No. 1, filed May 9, 2019. However, plaintiff Goldberg does admit to using pepper spray against Officer Mclasky while he was attempting to detain plaintiff Watkins. *Id.*

Both parties notified the Court that they intended to file motions for summary judgment. On October 7, 2020 the Court set the following briefing schedule: "Defendants' SJ Motion due

by 11/20/2020. Plaintiffs' Cross Motion for SJ and opposition due by 12/21/2020. Defendants' Reply and Opposition due by 1/21/2021 Plaintiffs Reply due by 2/18/2021." Civil Docket No. 45. By letter dated November 18, 2020 Defendants requested, with plaintiffs' consent, a brief extension of the briefing schedule as follows: Defendants' summary judgment motion due December 1, 2020; Plaintiffs' opposition and cross-motion due January 4, 2021; Defendants' Reply and Opposition due February 2, 2021; and Plaintiffs' Reply due February 26, 2021. Civil Docket No. 46. The Court granted defendants' request. Civil Docket No. 47, filed November 19, 2020. Defendants filed their motion for summary judgment on December 1, 2020.¹ See Civil Docket Nos. 48-51.

On January 1, 2021, plaintiffs filed a letter motion requesting a two week extension of the remaining briefing schedule as follows: Plaintiffs' Opposition and Cross Motion to be filed by January 18, 2021; Defendants' Reply and Opposition to be filed by February 16, 2021; and Plaintiffs' Reply to be filed by March 2, 2021. See Civil Docket No. 52. On January 2, 2021 the Court granted plaintiffs' extension request. Civil Docket No. 53.

Approximately four weeks have passed since January 18, 2021, the date by which plaintiffs requested that their opposition and cross motion be filed. To date, plaintiffs have failed to file an Opposition to Defendants' Summary Judgment Motion or a Cross Motion for Summary Judgment. Nor have they requested from either the defendants or the Court an enlargement of time to file such an Opposition or Cross Motion. *See generally* Civil Docket Sheet. Indeed, the plaintiffs have now had two months and fifteen days to file their intended motions and have failed to do so.

Accordingly, defendants respectfully request that: 1) defendants' December 1, 2020 motion for summary judgment be deemed unopposed and fully briefed; and 2) plaintiffs' request to file a cross motion for summary judgment be deemed as waived.

Thank you for your consideration herein.

Respectfully submitted,

Morgan C. McKinney /s/
Morgan C. McKinney, Esq.
Assistant Corporation Counsel
Special Federal Litigation Division

VIA ECF

cc: Samuel C. DePaola
Attorney for Plaintiffs

¹ Due to technical issues with uploading defendants' motion on to ECF, some of the motion papers were filed just past midnight on December 2, 2020.